

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014110680

ORDER FOLLOWING PREHEARING
CONFERENCE

On March 2, 2015, a telephonic prehearing conference was held before Administrative Law Judge Margaret Broussard, Office of Administrative Hearings. Gail Hodes, Attorney at Law, appeared on behalf of Student. David Mishook, Attorney at Law, appeared on behalf of Oakland Unified School District. The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following orders:

1. Hearing Dates, Times, and Location. The hearing shall take place at the **Office of Administrative Hearings, Oakland Office, 1515 Clay Street, Suite 206, Oakland, California, 94612.** The hearing shall take place on March 9, 10, 11 and 12, 2015, and continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. The hearing shall begin at 1:30 p.m. on March 9, 2015, and at 9:00 a.m. on all other days.

The parties shall immediately provide hearing dates to proposed witnesses, and shall subpoena witnesses if necessary, to ensure their availability. Failing to properly notify or subpoena a witness does not constitute good cause for a continuance based on his or her unavailability.

2. Issues and Proposed Resolutions. The issues below were discussed at the PHC and reordered and reworded for clarity¹:

Issue One: Did Oakland fail in its Child Find obligation by failing to refer Student for a special education assessment from November 2012 until October 2014?

¹ As clarified at the PHC, Student did not plead that she was eligible for special education, under any category, at any time prior to October 2014. Student was informed that any allegations that Oakland failed to offer or provide special education prior to Student being found eligible are predicated on a finding of eligibility during that same period, which Student did not plead.

Issue Two: Did Oakland commit the procedural violations of failing to assess Student for special education in response to Parent's verbal request in December 2012, and written requests on December 9, 2012, January 30, 2013, and May 17, 2014?

Issue Three: Did Oakland fail to assess Student in the areas of occupational therapy and behavior from November 2012 until the present time?

Issue Four: Did Oakland deny Student a free appropriate public education by committing the procedural violation of failing to provide Parent with a full and complete copy of records, pursuant to parental request, on October 16, 2014, by failing to provide copies of correspondence, disciplinary records, behavior logs, report cards, and assessments and by providing records which had pages missing; which resulted in denying the parents meaningful participation in the individualized education program development process and depriving Student of educational benefit?

Issue Five: Did Oakland substantively deny Student a FAPE by failing to offer and/or provide her with special education placement and services from November 2012 until October 2014?

Issue Six: Did Oakland substantively deny Student a FAPE, from October 2014 to the present, by failing to offer her an IEP which included placement in a structured therapeutic setting, a one-to-one behavioral aide, appropriate behavioral intervention and counseling?

Proposed Resolutions:

- a. Oakland shall find and fund an appropriate placement for Student with a 1:1 behavioral aide.
- b. Oakland shall fund independent educational evaluations in all areas of suspected disability including: neuropsychological testing, behavior assessment, and occupational therapy assessment.
- c. Oakland shall provide compensatory education in all areas of need, including, but not limited to: intensive 1:1 academic instruction and/or educational therapy, behavioral support, social skills, and counseling services, and reimbursement of educational and related services.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall number exhibits in a way that clearly identifies the party offering the exhibit (for example "S-1" for Student or "D-1" for District). Each exhibit shall be internally paginated, by exhibit, or all pages of a party's exhibit binder shall be Bates-stamped or otherwise consecutively numbered. Each exhibit will consist of one document or short series of documents that are related (such as emails). Each exhibit binder shall contain a detailed table of contents. Each party shall serve an exhibit binder containing

its respective exhibits on the other party in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

4. Witnesses.

a) Each party is responsible for procuring their own witnesses; however, the parties shall make witnesses under their control reasonably available to the other party. Witnesses shall be scheduled in a way that avoids delays and minimizes or eliminates having to call a witness twice or out of order. Each party shall disclose its respective witness list to the other party in compliance with Education Code section 56505.

b) The parties will meet and confer regarding witness scheduling prior to the first day of hearing. At the beginning of the hearing, each party shall provide the ALJ a tentative witness list containing the estimated length of the witness' testimony and, identifying the witnesses the party intends to call. Prior to commencing the hearing, the ALJ and the parties will discuss the proposed witness schedule and address scheduling issues for individual witnesses, before the schedule is finalized. The ALJ has discretion to limit the number of witnesses and the length of their testimony.

5. Scope of Witness Examination. After the first direct and cross-examinations, the parties will question witnesses on matters raised in the immediately preceding examination. Parties shall be required to establish their cases in chief (conducting both direct and cross) so that each witness only appears once.

6. Telephonic Testimony. Neither party moved for telephonic testimony. Any request to call a witness telephonically shall be made to the ALJ. If granted, the party calling the witness shall provide the proposed witness with a complete set of exhibit binders from all parties prior to the testimony of the witness, and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, neither party intends to make an audio recording of the hearing. Any party wishing to record the hearing must notify the ALJ at the hearing and the following conditions shall apply to any recording: 1) that OAH's recording is the only official recording; 2) that the recorder will be turned on and off at the same time as the ALJ's recording, to avoid recording conversations while off the record; and 3) the operation of the party's recording mechanism will not be allowed to delay the hearing.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

8. Motions. No prehearing motions are pending or contemplated. Any motions filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during this prehearing conference.

9. Compensatory Education and Reimbursement. Any party seeking expense reimbursements shall present admissible evidence of the expense, or a stipulation to the amount, as part of its case in chief. Any party seeking compensatory education shall provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

10. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

11. Conduct and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

12. Special Needs and Accommodations. At present neither party anticipates the need for any special accommodation for any witness or party with the exception of making sure all parties and their representatives are in a position to hear the proceedings. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is made known. Additional information concerning a request for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>

13. Hearing Closed To the Public. The hearing will be closed to the public.

14. Settlement. The parties are encouraged to continue their attempts to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If a settlement is reached five days or fewer than five days before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. THE BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.

Dates for hearing will not be vacated until OAH receives a letter of withdrawal, or those portions of the signed agreement withdrawing the case, with signatures. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. In the event a settlement agreement is executed subject to board approval, the parties may request to continue the matter and set a telephonic status conference call following the date anticipated for board approval. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

15. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: March 3, 2015

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings